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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,966

06/07/2005

Jean Fusari

05005

2087

23338 7590 01/05/2007
DENNISON, SCHULTZ & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

SONNETT, KATHLEEN C

ART UNIT

PAPER NUMBER

3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/521,966

Applicant(s)

FUSERI ET AL.

Examiner

Kathleen Sonnett

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's amendments to claims 1, 3-5, 7, 8, 17, 19, and 20 have overcome the previously presented 35 U.S.C. 112 2nd paragraph rejections of these claims in the office action dated 8/9/2006.

Claim Objections

3. Claim 23 is objected to because of the following informalities: wording. It appears to the examiner that "tissues" in line 6 of claim 23 should read "tissue" to be consistent with claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. **Claims 1-23** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1, from which the remaining claims depend, positively recites tissue (line 10.... "the bearing surface is in contact with tissue"). The examiner suggests adding the phrase "is adapted to be" immediately before "in contact with tissue". Alternatively, the phrase "in use" could be added immediately after "in contact with tissue".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-3, 8 and 21** are rejected under 35 U.S.C. 102(b) as being anticipated by Kensey et al. (U.S. 5,222,974). Kensey et al. discloses a device comprising blocking means enabling two strands of the thread of a suture to be connected together in a blocking zone (142D), and comprising a bearing element having a bearing surface for bearing against the tissues to be sutured together, the bearing surface comprising a contact zone in which the bearing surface is in contact with tissue, and a controlled tensioning means (142A) for applying controlled tensioning to the thread and suitable for exerting a tension having a first predetermined tension value independent of tension exerted on the threads before blocking thereof after the two strands of the thread have been blocked together using the blocking means, with the junction between the bearing element and the blocking zone of the device being provided by the controlled tensioning means. Looking at the device of figs. 9 and 10 as shown in use in fig. 23, the distal end (distal 142D), when positioned on tissue, serves as the bearing surface and the device is suitable for exerting a tension independent of the tension exerted on the threads before blocking thereof (col. 8 ll. 4-11). A suture with a protuberance or holding sleeve (138) like the one disclosed by Kensey can be used such that the blocking means (proximal 142D) is held at a certain distance from the proximal 142D.
8. Regarding claim 2, the device automatically tensions the threads to a predetermined tension value.

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9. Regarding claim 3, the device is constructed and arranged to enable the distance between the blocking zone and contact zone to be adjusted after blocking the strands of thread in the blocking zone between an initial distance and a final distance suitable for exerting a controlled tension after the blocking. The controlled tensioning means (spring 142A) can be held in compression, put on the suture, and allowed to expand to a final distance until it engages tissue at one end and a protuberance on the suture at the proximal end.
10. Regarding claim 8, suture being held by the device can be cut between the blocking zone and suture orifices formed in the tissue (at contact zone).
11. Regarding claim 21, the device is a single one-piece mechanical part (see fig. 9 and 10).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Sonnett whose telephone number is 571-272-5576. The examiner can normally be reached on 7:30-5:00, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCS 12/20/06


GLENN K. DAWSON
PRIMARY EXAMINER